



HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No.496/2004

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant
Owner

Ram Awatar Agrawal
S/o Shri Kishan Agrawal
Aged about 45 years
R/o Near Banaras Chowk,
Rajesh Restaurant Ambikapur,
Distt. Surguja (CG)

Respondents
Claimants

Versus

1. Ramjan S/o. Lal Mohammed Aged about 40 years,
R/o Village Vijay Nagar, P.S. Ramanujganj, Tahsil Pal, Distt. Surguja (CG)
2. The Oriental Insurance Co. Ltd. Ambikapur, Surguja (CG)
3. (Respondent/Non-applicant)
Santosh Gupta S/o Unknown
Aged about 27 years,
R/o Village and Post Chatrangi,
Distt. Siddhi (M.P.)

Appeal under Section 173 of Motor Vehicle Act

Present:-

Shri Manoj Paranjpe, counsel for the appellant/Owner.
Shri Abhishek Sinha, counsel for the Non-applicant No.2/Insurance Company.

ORAL ORDER

(Passed on 7th August, 2007)

Heard on M.C.P. No.658/2004 which is an application under Section 5 of the Limitation Act for condonation of delay of 810 days in filing the appeal.

(2) Admittedly, the Motor Accident Claims Tribunal, Ambikapur (hereinafter referred to as the 'M.A.C.T') in claim case No.82/1999 passed an award dated 24.10.2001 granting compensation of Rs.1,63,600/- against the appellant/owner while exonerating the Insurance Company. Against this

award, the appellant/owner preferred an application on 26.5.2003 before the District Consumer Dispute Redressal Forum, Surguja as case No.81/2003 which was dismissed on 12.3.2004. Thereafter, on 12.4.2004, this miscellaneous appeal was filed.

(3) Shri Manoj Paranjpe, learned counsel for the appellant/owner while placing reliance on Union of India and others Vs. West Coast Paper Mills Ltd And another 2004 AIR SCW 1478 and Union of India Vs. S.S. Gurayya 2001 AIR SCW 5187 (1) has contended that the appellant/owner was pursuing a legal remedy before the District Consumer Redressal Forum, Surguja (hereinafter referred to as the consumer forum) and thereafter on dismissal of the case No.81/2003 on 12.3.2004 has preferred this appeal on 12.4.2004. It was urged that the appellant being a rustic and illiterate villager was litigating before a wrong forum under a wrong advice by his counsel. It was further urged that the appellant/owner has thus shown sufficient cause for the delay in filing the appeal which this Court has jurisdiction to condone not only under section 5 of the Limitation Act but also under the second proviso to sub-clause (1) of Section 173 of the Motor Vehicles Act.

(4) On the other hand, Shri Abhishek Sinha, learned counsel for the respondent No.2/insurance company opposed the application and submitted that the appellant/owner had, after the impugned award dated 24-10-2001, taken no steps to prefer this Miscellaneous Appeal and it was for the first time on 26-05-2003 that he initiated proceedings before the consumer forum for which there was enormous unexplained delay on the part of the appellant/owner and there was no sufficient cause for the enormous delay from the date of award dated 24-10-2001 till initiation of

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proceedings before the consumer forum on 26-05-2003. It was also contended that the appellant/owner had not filed the affidavit of his counsel who had ill advised him to litigate before the consumer forum.

(5) Having considered the rival submissions, I am of the considered opinion that there is no sufficient explanation for the inordinate delay in filing this appeal. The fact that the appellant/owner did not prefer an appeal till 26-05-2003 goes to show that perhaps on legal advice that preferring a Miscellaneous Appeal would be hopelessly barred by limitation and therefore he should take a chance before the consumer forum, that he had initiated proceedings at a very late stage on 26-05-2003 before the consumer forum. The appellant/owner did not file the affidavit of the advocate on whose advice he did not prefer any appeal in the period before 26-05-2003 and initiated proceedings before the consumer forum on 26-05-2003.

(6) In this manner, the application under section 5 of the Limitation Act lacks bonafides. The case law cited by the learned counsel for the appellant/owner is thus clearly distinguishable and does not help the appellant in any manner.

(7) In the result, this appeal being hopelessly barred by limitation, the application M.(C.)P.No.658/2004 for condonation of delay is dismissed and as a result, the appeal also stands dismissed being barred by limitation.

(8) In view of the above, I.A.No.02 for dispensing with the service to respondent No.3 also stands disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge